

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PLUMBERS AND PIPEFITTERS LOCAL	:	CIVIL ACTION
UNION NO. 74 ANNUITY FUND, et al.	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
TRI-STATE TECHNOLOGIES, INC.	:	
	:	
Defendant	:	NO. 07-CV-94 (JJF)

**MOTION FOR JUDGMENT BY DEFAULT BY THE COURT  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE  
55(b)(2) AGAINST TRI-STATE TECHNOLOGIES, INC.**

Plaintiffs, Plumbers and Pipefitters Local Union No. 74 Annuity Fund, Plumbers and Pipefitters Local No. 74 Health and Welfare Trust Fund, Plumbers and Pipefitters Local Union No. 74 Pension Fund, (formerly the Pipefitters Local Union No. 80 Employers Joint Pension Trust Fund), Plumbers and Pipefitters Local No. 74 Apprenticeship Fund, Pipefitters Local Union No. 74 Educational/PAC Fund, (respectively, “Annuity Fund”, “Welfare Fund”, “Pension Fund”, “Apprenticeship Fund”, “Education/PAC Fund”, and, collectively, “Funds”), Local Union No. 74 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (“Union” and together with Funds, “Plaintiffs”), by their legal counsel, respectfully move this Court, pursuant to Fed. R. Civ. P. 55(b)(2), to enter default judgment in favor of the Plaintiffs and against Defendant, Tri- State Technologies, Inc. (“Company” or “Defendant”) for unpaid contributions, contractual liquidated damages, interest and attorneys’ fees and costs incurred by the Funds pursuant to 29 U.S.C. §§1132(g)(2)(A)-(D). The Funds also request that the Court order Defendant to produce its records for an audit to determine whether any additional monies are owed.

In support of this Motion, Plaintiffs rely upon the allegations in their Complaint, the Declaration of Scott Ernsberger<sup>1</sup>, the Declaration of Rick S. Miller, Esquire<sup>2</sup>, the Declaration of Sanford G. Rosenthal, Esquire<sup>3</sup> and the exhibits attached to this Motion.

The grounds for this Motion are as follows:

1. Prior to the commencement of this action, the Funds attempted to resolve this delinquency in an amicable manner.
2. The requested payments were not received and on February 20, 2007, the Complaint in this matter was filed. The Complaint was served on Company on February 21, 2007, as appears from the Affidavit of Service filed with the Court.
3. No Answer to the Complaint was filed by the Company.
4. On March 20, 2007, Plaintiffs filed a Request to Clerk to Enter Default against the Company pursuant to Fed. R. Civ. P. 55(a) and mailed a copy first class mail, postage prepaid to the Company.
5. The Company is not an infant or incompetent person and as Company is a corporation it is not in the military service.

**WHEREFORE**, Plaintiffs seek the following relief:

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<sup>1</sup> The Declaration of Scott Ernsberger ("Ernsberger Declaration") is attached to this Motion as Exhibit 1. The document referred to in the Ernsberger Declaration is attached to this Motion as Exhibit 2.

<sup>2</sup> The Declaration of Rick Miller ("Miller Declaration") is attached to this Motion as Exhibit 3. The document referred to in the Miller Declaration is attached to this Motion as Exhibit 4.

<sup>3</sup> The Declaration of Sanford G. Rosenthal ("Rosenthal Declaration") is attached to this Motion as Exhibit 5. The documents referred to in the Rosenthal Declaration are attached to this Motion as Exhibits 6 and 7.

(a) Judgment entered as set out in the proposed Order and Judgment attached to this Motion.

(b) Such other and further relief as the Court deems just, necessary and appropriate.

Respectfully submitted,

FERRY, JOSEPH & PEARCE, P.A.

By: /s/Rick S. Miller  
RICK S. MILLER (#3418)  
824 Market St., Suite 904  
P.O. Box 1351  
Wilmington, DE 19899  
(302) 575-1555

Date: May 3, 2007

OF COUNSEL:  
SANFORD G. ROSENTHAL  
Jennings Sigmond, P.C.  
The Penn Mutual Towers, 16<sup>th</sup> Floor  
510 Walnut Street  
Philadelphia, PA 19106  
(215) 351-0611

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Plaintiff's Motion for Judgment By Default By the Court Pursuant to Federal Rule of Civil procedure 55(b)(2) Against Tri-State Technologies, Inc., was served by first class mail on May 3, 2007 to the following:

Tri-State Technologies, Inc.  
Attn: Mr. Ed Mendez  
300 Caron Drive  
Bear DE 19701

On penalty of perjury, I declare the foregoing is true and correct.

/s/Rick S. Miller  
Rick S. Miller (#3418)

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE (WILMINGTON)**

PLUMBERS AND PIPEFITTERS LOCAL	:	CIVIL ACTION
UNION NO. 74 ANNUITY FUND, et al.	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
TRI-STATE TECHNOLOGIES, INC.	:	
	:	
Defendant	:	NO. 07-CV-94 (JJF)

**DECLARATION OF SCOTT ERNSBERGER**

Scott Ernsberger states, under penalty of perjury, that the following is true and correct to the best of his knowledge.

1. My name is Scott Ernsberger, and my business address is GEMGroup, Brandywine Corporate Center, 650 Naamans Road, Suite 303, Claymont, Delaware 19703.
2. GEMGroup serves as the contract administrator of the Plumber and Pipefitters Union No. 74 Annuity Fund, Plumbers and Pipefitters Local Union No. 74 Pension Fund and Plumbers and Pipefitters Local Union No. 74 Health and Welfare Trust Fund, (collectively, "Funds") and I am authorized to make this Declaration on behalf of the Plaintiffs.
3. The Funds are "employee benefit plans" as defined in Section 3(3) of ERISA, as amended, 29 U.S.C. Section 1002(2)(A)(I), established by the Funds and employers in private industry whose employees are members of or otherwise represented by the International and its district councils and local unions, for the purpose of providing retirement income to the employees.

4. As contract administrator of the Funds, GEMGroup is charged with keeping and maintaining records of contributions received by the Funds, and maintaining individual records of each person, firm and corporation required to make such contributions to the Funds.

5. Tri-State Technologies, Inc. ("Company" or "Defendant") is a Delaware corporation. Defendant is bound to a collective bargaining agreement with Plumbers and Pipefitters Local Union 74. The collective bargaining agreement requires Defendant to submit monthly contributions to the Funds based on hours worked or paid to all employees in the bargaining unit. Contributions must be made for each hour employees work or receive pay at the contribution rate specified in the agreement. Defendant is required to submit its remittance report and contributions by the 28<sup>th</sup> day of the month following the month in which the hours accrued ("the Due Date"). Failure to make the required contributions, or to submit either incorrect or late remittance reports and contributions, results in a delinquency to the Funds. The Defendant is also bound by the Trust Agreements of the Funds.

6. The collective bargaining agreement and the Trust Agreements provide for an audit of the Company's records to confirm the accuracy of the information on the remittance reports.

7. My review of the regular business records maintained by the Funds shows that:

(a) The Defendant failed to submit contributions in the amount of \$221,646.90 for the months of July 2006 through February 2007 in the manner prescribed by the collective bargaining agreement;

(b) Based on the failure to submit required contributions, Defendant owes liquidated damages in the amount of \$36,369.80. An employer is assessed liquidated damages

equal to 10% of the total unpaid contributions if the contributions are paid after the Due Date but before the end of the following month. Thereafter, liquidated damages are assessed at the rate of 20% of the outstanding contributions. The liquidated damages provided in the collective bargaining agreement and in the Agreements and Declarations of Trust of the Funds are, in part, to compensate the Funds for the losses and added costs resulting from employer contribution delinquencies. The liquidated damages relate to the losses and additional costs incurred by the Funds. The losses and added expenses incurred by the Funds also significantly impair their ability to continue to provide benefits to not only the Defendant's employees, but to employees of companies that have complied with their contractual obligations.

(c) The contribution deficiency, assessed interest on the unpaid contributions and liquidated damages on unpaid contributions are itemized in the Employer Status Report ("Status Report"). This Status Report is prepared in the regular course of business of GEMGroup. A copy of the Status Report is attached to the Motion as Exhibit 2.

(d) Defendant owes interest through April 23, 2007 in the amount of \$5,545.93 on the unpaid contributions set forth in ¶7(a). The interest has been calculated as provided in the Rules and Regulations of the Funds at 1½% per month on contributions that remain unpaid more than one month from the Due Date.

8. I have executed this Declaration in support of the Plaintiffs' Motion for Default Judgment against Defendant, Tri-State Technologies, Inc. and request this Court to consider the same as proof in support of the allegations contained in the Complaint of the Funds and other



facts stated in this Declaration.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 3, 2007

  
\_\_\_\_\_  
SCOTT ERNSBERGER

## EXHIBIT 2



# Trustee Employer Status Report

## Plumbers & Pipefitters Local 74

### All Funds

23 April 2007

Page 1 of 5

Tri-State Technologies, Inc.

Sub Group	Invoice Number	Work Month	Postmark Date	Date Received	Description	Status	Liquidated Damage/ Interest	Discrepancy Amount
JR	162263	07/2006	12/06/2006	12/06/2006	Overage		0.00	-699.76
COM	159227	08/2006	10/02/2006	10/03/2006	Shortage	ATTY	0.00	38,008.59
COM	163621	08/2006	01/18/2007	01/18/2007	Shortage	ATTY	0.00	181.80
JR	162264	08/2006	12/06/2006	12/06/2006	Overage		0.00	-2,381.26
COM	163622	09/2006	01/18/2007	01/18/2007	Shortage	ATTY	0.00	176.92
SRV	162874	10/2006	01/04/2007	01/04/2007	Pay Stub Shortage	ATTY	0.00	1,060.21
COM	163623	10/2006	01/18/2007	01/18/2007	Shortage	ATTY	0.00	189.60
SRV	162941	11/2006	12/28/2006	12/29/2006	Overage		0.00	-80.81
SRV	162875	11/2006	01/04/2007	01/04/2007	Pay Stub Shortage	ATTY	0.00	3,332.64
JR	162953	11/2006	12/31/2006	01/03/2007	Shortage	ATTY	0.00	10.33
COM	164349	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	1,842.92
COM	164347	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	5,342.69
COM	164348	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	3,173.87
COM	164350	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	8,234.82
COM	164351	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	12,796.31
COM	164353	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	5,846.88
COM	164354	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	606.67
SRV	164355	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	8,675.21
SRV	164356	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	4,004.84
SRV	164357	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	2,310.65
SRV	164358	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	939.02
SRV	164359	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	265.90
SRV	164360	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	5,502.55
SRV	164361	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	1,619.22
COM	164352	12/2006	02/01/2007	02/01/2007	Report Received No Money	ATTY	0.00	87.76
COM	167875	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		52.94	0.00
COM	167875	12/2006	04/23/2007	04/23/2007	Liquidated Damages		368.59	0.00
COM	167876	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		240.43	0.00
COM	167876	12/2006	04/23/2007	04/23/2007	Liquidated Damages		1,068.54	0.00
COM	167877	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		142.83	0.00
COM	167877	12/2006	04/23/2007	04/23/2007	Liquidated Damages		634.78	0.00
COM	167878	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		370.57	0.00
COM	167878	12/2006	04/23/2007	04/23/2007	Liquidated Damages		1,646.97	0.00
COM	167879	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		575.84	0.00
COM	167879	12/2006	04/23/2007	04/23/2007	Liquidated Damages		2,559.27	0.00
COM	167880	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		263.11	0.00
COM	167880	12/2006	04/23/2007	04/23/2007	Liquidated Damages		1,169.38	0.00
COM	167881	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		27.30	0.00
COM	167881	12/2006	04/23/2007	04/23/2007	Liquidated Damages		121.34	0.00

Report Parameter Name: TRUSTEE EMPLOYER STATUS REPORT (507)

TR00667

000016



# Trustee Employer Status Report Plumbers & Pipefitters Local 74 All Funds

23 April 2007

Page 2 of 5

Tri-State Technologies Inc

Sub Group	Invoice Number	Work Month	Postmark Date	Date Received	Description	Status	Liquidated Damage/Interest	Discrepancy Amount
COM	167882	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		3.95	0.00
COM	167882	12/2006	04/23/2007	04/23/2007	Liquidated Damages		17.56	0.00
SRV	167883	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		390.39	0.00
SRV	167883	12/2006	04/23/2007	04/23/2007	Liquidated Damages		1,735.05	0.00
SRV	167884	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		180.22	0.00
SRV	167884	12/2006	04/23/2007	04/23/2007	Liquidated Damages		800.97	0.00
SRV	167885	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		103.98	0.00
SRV	167885	12/2006	04/23/2007	04/23/2007	Liquidated Damages		462.13	0.00
SRV	167886	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		42.26	0.00
SRV	167886	12/2006	04/23/2007	04/23/2007	Liquidated Damages		187.81	0.00
SRV	167887	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		11.97	0.00
SRV	167887	12/2006	04/23/2007	04/23/2007	Liquidated Damages		53.18	0.00
SRV	167888	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		247.62	0.00
SRV	167888	12/2006	04/23/2007	04/23/2007	Liquidated Damages		1,100.51	0.00
SRV	167889	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		72.87	0.00
SRV	167889	12/2006	04/23/2007	04/23/2007	Liquidated Damages		323.85	0.00
SRV	167894	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		44.73	0.00
SRV	167894	12/2006	04/23/2007	04/23/2007	Liquidated Damages		298.18	0.00
SRV	167895	12/2006	04/23/2007	04/23/2007	Interest on Late Contributions		160.55	0.00
SRV	167895	12/2006	04/23/2007	04/23/2007	Liquidated Damages		1,070.32	0.00
COM	166051	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	7,633.34
COM	166052	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	1,331.58
COM	166054	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	9,951.78
COM	166055	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	633.41
COM	166056	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	819.25
COM	166057	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	6,900.79
COM	166058	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	268.87
SRV	166059	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	6,323.31
SRV	166061	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	3,801.22
SRV	166062	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	1,753.08
SRV	166064	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	1,019.28
SRV	166067	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	1,490.90
SRV	166878	01/2007	03/29/2007	03/29/2007	Report Received No Money	ATTY	0.00	5,351.60
COM	166053	01/2007	03/08/2007	03/08/2007	Report Received No Money	ATTY	0.00	14,217.63
SRV	166880	01/2007	03/29/2007	03/29/2007	Report Received No Money	ATTY	0.00	5,873.28
SRV	167890	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		189.70	0.00
SRV	167890	01/2007	04/23/2007	04/23/2007	Liquidated Damages		1,264.67	0.00
SRV	167891	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		114.04	0.00
SRV	167891	01/2007	04/23/2007	04/23/2007	Liquidated Damages		760.25	0.00

Report Parameter Name: TRUSTEE EMPLOYER STATUS REPORT (507)

TR00667

000017



# Trustee Employer Status Report Plumbers & Pipefitters Local 74 All Funds

23 April 2007

Page 3 of 5

Tri-State Technologies Inc.

Sub Group	Invoice Number	Work Month	Postmark Date	Date Received	Description	Status	Liquidated Damage/ Interest	Discrepancy Amount
SRV	167892	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		52.60	0.00
SRV	167892	01/2007	04/23/2007	04/23/2007	Liquidated Damages		350.62	0.00
SRV	167893	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		30.58	0.00
SRV	167893	01/2007	04/23/2007	04/23/2007	Liquidated Damages		203.86	0.00
SRV	167896	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		176.20	0.00
SRV	167896	01/2007	04/23/2007	04/23/2007	Liquidated Damages		1,174.56	0.00
COM	167897	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		229.00	0.00
COM	167897	01/2007	04/23/2007	04/23/2007	Liquidated Damages		1,526.67	0.00
COM	167898	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		39.95	0.00
COM	167898	01/2007	04/23/2007	04/23/2007	Liquidated Damages		266.32	0.00
COM	167899	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		298.56	0.00
COM	167899	01/2007	04/23/2007	04/23/2007	Liquidated Damages		1,990.36	0.00
COM	167900	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		19.01	0.00
COM	167900	01/2007	04/23/2007	04/23/2007	Liquidated Damages		126.69	0.00
COM	167901	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		24.58	0.00
COM	167901	01/2007	04/23/2007	04/23/2007	Liquidated Damages		163.85	0.00
COM	167902	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		207.03	0.00
COM	167902	01/2007	04/23/2007	04/23/2007	Liquidated Damages		1,380.16	0.00
COM	167903	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		8.07	0.00
COM	167903	01/2007	04/23/2007	04/23/2007	Liquidated Damages		53.78	0.00
COM	167904	01/2007	04/23/2007	04/23/2007	Interest on Late Contributions		426.53	0.00
COM	167904	01/2007	04/23/2007	04/23/2007	Liquidated Damages		2,843.53	0.00
SRV	167262	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	6,600.37
SRV	167264	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	2,001.63
SRV	167266	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	3,007.25
SRV	167268	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	2,257.90
SRV	167270	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	1,407.06
SRV	167272	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	3,977.35
COM	167274	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	7,497.43
COM	167276	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	11,120.35
COM	167278	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	29.41
COM	167280	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	352.25
COM	167282	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	41.12
COM	167284	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	8,340.26
COM	167286	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	876.75
COM	167288	02/2007	04/04/2007	04/04/2007	Report Received No Money	ATTY	0.00	5,720.88
COM	167905	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		112.47	0.00
COM	167905	02/2007	04/23/2007	04/23/2007	Liquidated Damages		1,499.49	0.00
COM	167906	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		166.81	0.00

Report Parameter Name: TRUSTEE EMPLOYER STATUS REPORT (507)

TR00667

000018





# Trustee Employer Status Report

## Plumbers & Pipefitters Local 74

### All Funds

23 April 2007

Page 4 of 5

Tri-State Technologies Inc.

Sub Group	Invoice Number	Work Month	Postmark Date	Date Received	Description	Status	Liquidated Damage/ Interest	Discrepancy Amount
COM	167906	02/2007	04/23/2007	04/23/2007	Liquidated Damages		2,224.07	0.00
COM	167907	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		0.45	0.00
COM	167907	02/2007	04/23/2007	04/23/2007	Liquidated Damages		5.89	0.00
COM	167908	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		5.29	0.00
COM	167908	02/2007	04/23/2007	04/23/2007	Liquidated Damages		70.45	0.00
COM	167909	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		0.62	0.00
COM	167909	02/2007	04/23/2007	04/23/2007	Liquidated Damages		8.23	0.00
COM	167910	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		125.11	0.00
COM	167910	02/2007	04/23/2007	04/23/2007	Liquidated Damages		1,668.06	0.00
COM	167911	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		13.16	0.00
COM	167911	02/2007	04/23/2007	04/23/2007	Liquidated Damages		175.35	0.00
COM	167912	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		85.82	0.00
COM	167912	02/2007	04/23/2007	04/23/2007	Liquidated Damages		1,144.18	0.00
SRV	167913	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		99.01	0.00
SRV	167913	02/2007	04/23/2007	04/23/2007	Liquidated Damages		1,320.08	0.00
SRV	167914	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		30.03	0.00
SRV	167914	02/2007	04/23/2007	04/23/2007	Liquidated Damages		400.33	0.00
SRV	167915	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		45.11	0.00
SRV	167915	02/2007	04/23/2007	04/23/2007	Liquidated Damages		601.45	0.00
SRV	167916	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		33.87	0.00
SRV	167916	02/2007	04/23/2007	04/23/2007	Liquidated Damages		451.58	0.00
SRV	167917	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		21.11	0.00
SRV	167917	02/2007	04/23/2007	04/23/2007	Liquidated Damages		281.42	0.00
SRV	167918	02/2007	04/23/2007	04/23/2007	Interest on Late Contributions		59.66	0.00
SRV	167918	02/2007	04/23/2007	04/23/2007	Liquidated Damages		795.47	0.00
Net Sub Total Discrepancy :							41,915.73	221,646.90
Total Net Discrepancy :								263,562.63



**Trustee Employer Status Report  
Plumbers & Pipefitters Local 74  
All Funds**

23 April 2007

Page 5 of 5

**Description Summary**

<b>Description</b>	<b>Discrepancy Amount</b>
Interest on Late Contributions	5,545.93
Liquidated Damages	36,369.80
Overage / Shortage	35,405.41
Pay Stub Shortage	4,392.85
Report Received No Money	181,848.64
<b>Fund Total:</b>	<b>263,562.63</b>

## EXHIBIT 3



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PLUMBERS AND PIPEFITTERS LOCAL	:	CIVIL ACTION
UNION NO. 74 ANNUITY FUND, et al.	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
TRI-STATE TECHNOLOGIES, INC.	:	
	:	
Defendant	:	NO. 07-CV-94 (JJF)

**DECLARATION OF RICK S. MILLER, ESQUIRE**

I, Rick S. Miller, Esquire, declares on penalty of perjury under the laws of the United States as follows:

1. I am a shareholder of the firm of Ferry, Joseph & Pearce, P.A., and I am local counsel to the plaintiff in this case. I was admitted to the Delaware Bar in 1995, and to the Bar of this Court in 1996. I have a diverse general litigation practice as both lead and local counsel which includes work in every state and federal court in this State, with emphasis on commercial and bankruptcy litigation.

2. Attached to the Motion as Exhibit 4 is a computerized billing list showing all work performed by the offices of Ferry, Joseph & Pearce, P.A. and related costs in connection with serving as local counsel in this action through April 30, 2007. The computerized listing is prepared from contemporaneous attorney time and expense records, the originals of which are maintained in the regular business records of Ferry, Joseph & Pearce, P.A..

3. Based upon my review of Exhibit 4, the Funds have incurred \$1,450.00 in attorneys' fees and costs for work performed by Ferry, Joseph & Pearce, P.A. through April 30,

2007.

4. I have executed this Declaration in support of Plaintiffs' Motion for Default Judgment against Defendant, Tri-State Technologies, Inc., and request this Court to consider the same as proof in support of the allegations contained in the Complaint of the Funds and other facts stated in this Declaration.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 3, 2007

/s/Rick S. Miller  
RICK S. MILLER, ESQUIRE (#3418)

## EXHIBIT 4

***Ferry, Joseph & Pearce, P.A.***

824 Market Street, Suite 904

P.O. Box 1351

Wilmington, DE 19899

Ph:(302) 575-1555

Fax:(302) 575-1714

Plumbers &amp; Pipefitters Local 74 et al.

May 3, 2007

Jennings Sigmond

510 Walnut St., Suite 1600

Philadelphia, PA

19106-3683

File #: plumbers2

**Attention:**

Inv #: Settle

**RE:** Tri-State Technologies, Inc.

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Feb-20-07	E-mail correspondence with Mr. Rosenthal	0.10	25.00	RSM
	Confer with TJT	0.10	25.00	RSM
	Review and prepare law suit filings	1.50	375.00	RSM
Feb-21-07	E-file exhibits to complaint	0.20	50.00	RSM
Feb-22-07	File return of service; e-mail to Mr. Rosenthal	0.30	75.00	RSM
Mar-01-07	Review Court filings; e-mail to Mr. Rosenthal	0.20	50.00	RSM
Mar-16-07	E-mail correspondence with Mr. Rosenthal	0.20	50.00	RSM
Mar-20-07	Teleconference with Mr. Rosenthal; teleconference with process server; e-mail to Mr. Rosenthal	0.40	100.00	RSM
	File default notice	0.30	75.00	RSM
Mar-23-07	Review voice mail from Mr. Mendez; e-mail to Mr. Rosenthal	0.20	50.00	RSM
Apr-20-07	Teleconference with Mr. Rosenthal; confer with T. Tacconelli; e-mail to Mr. Rosenthal	0.50	125.00	RSM
Apr-27-07	Teleconference with Mr. Rosenthal	0.10	25.00	RSM

Totals	4.10	\$1,025.00
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**DISBURSEMENTS**

Feb-20-07	U.S. District Court - filing fee	350.00
Feb-22-07	Brandywine Process Servers - service	35.00
Mar-01-07	Parcel's, Inc. - burn e-mailed pdf's to disc	40.00

Totals		\$425.00
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Total Fee & Disbursements for all charges on this matter	\$1,450.00
--	------------

TAX ID Number 51-0328068

**PAYMENT DETAILS**

Mar-20-07	Payment - Thank you	975.00
Apr-18-07	Payment - Thank you	162.50
Apr-18-07	Payment - Thank you	32.50
Apr-18-07	Payment - Thank you	130.00

Total Payments	\$1,300.00
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## EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PLUMBERS AND PIPEFITTERS LOCAL	:	CIVIL ACTION
UNION NO. 74 ANNUITY FUND, et al.	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
TRI-STATE TECHNOLOGIES, INC.	:	
	:	
Defendant	:	NO. 07-CV-94 (JJF)

**DECLARATION OF SANFORD G. ROSENTHAL, ESQUIRE**

Sanford Rosenthal, Esquire, declares on penalty of perjury under the laws of the United States as follows:

1. I am a shareholder in the law firm of Jennings Sigmond with responsibility for this case. I am submitting this Declaration to document the attorneys' fees and costs of Jennings Sigmond, P.C. which the Funds have incurred in this case through April 30, 2007 and to support an award of attorneys fees and costs to Plaintiffs

Case Fees

2. Attached as Exhibit 6 to Plaintiffs' Motion for Entry of Judgment by Default, and incorporated herein by reference, is a detailed statement showing all work performed by the office of Jennings Sigmond, P.C. and related costs in connection with this action through April 30, 2007. The statement was prepared from contemporaneous attorney time and expenses records and bills, the originals of which are maintained in the regular business records of Jennings Sigmond. Each piece of work is separately coded and the work performed is described. The total fees of Jennings Sigmond relevant to this case are \$3,529.50 and expenses are \$86.15

for a total of \$3,615.65.

3. The identity of those performing services related to this matter and normal hourly rates are as follows.

<u>INITIALS</u>	<u>NAME</u>	<u>TITLE</u>	<u>HOURLY RATE</u>
SGR	Sanford G. Rosenthal	Shareholder	\$240.00
CTM	Cathy T. Morton	Paralegal	\$ 85.00

4. Plaintiffs only seek judgment for fees in the bills, which reflect a special fee schedule with the Plumbers and Pipefitters Local Union No. 74 Annuity Fund, Plumbers and Pipefitters Local No. 74 Health and Welfare Trust Fund, Plumbers and Pipefitters Local Union No. 74 Pension Fund (formerly the Pipefitters Local Union No. 80 Employers Joint Pension Trust Fund), Plumbers and Pipefitters Local No. 74 Apprenticeship Fund, Pipefitters Local Union No. 74 Educational/PAC Fund, (respectively, "Annuity Fund", "Welfare Fund", "Pension Fund", "Apprenticeship Fund", "Education/PAC Fund", and, collectively, "Funds"), and Local Union No. 74 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO ("Union" and together with Funds, "Plaintiffs") for a \$240.00 per hour rate for shareholders and \$85.00 per hour for paralegals and clerks.

#### Attorney Background and Experience

5. Sanford G. Rosenthal. Sanford G. Rosenthal is a firm shareholder and co-leader of the ERISA practice and has practiced law for 23 years. He received his undergraduate education at Pennsylvania State University, where he graduated in 1971. He worked as Audit Manager and Office Manager in the administrative team for the Teamsters Health and Welfare and Pension Funds of Philadelphia and Vicinity from 1971 through 1980. He attended the Dickinson School of Law, where he was awarded the Degree of Juris Doctor in 1983. He is a



member of the Bar of the Supreme Court of Pennsylvania and the District of Columbia Bar. He is also admitted to practice before the United States Court of Appeals for the Third Circuit and the United States District Courts for the Eastern and Middle Districts of Pennsylvania. His practice concentrates on the representation of multiemployer benefit funds in delinquency litigation and counseling. A sample of his litigation experience is available in 32 published cases that can be obtained through a Westlaw search for "AT ("Sanford G. Rosenthal") and Jennings" in the FPENS-CS library.

6. Catherine T. Morton. Catherine T. Morton is a Paralegal in the Jennings Sigmond office. She has been with the office for six (6) years and is experienced in corporate computer database research, electronic filing procedures throughout the country and preparation and documentation of service of complaints and other pleadings for employee benefit collections matters, in addition to other skills.

#### Legal Market Benchmark

7. The time and fees charged in this case are reasonable based on prevailing market rates for similar services by lawyers of reasonably comparable skill, experience and reputation in both the Philadelphia and Northern Virginia markets.

8. My opinion that the time and fees are reasonable is based on the following factors:

(a) We serve as counsel or co-counsel to over 20 multiemployer employee benefit funds groups. The firm currently has 17 lawyers, with a dedicated benefits department of seven (7) lawyers plus part-time work by three (3) other lawyers in the labor practice. The work is specialized and our competition often is large corporate firms with both employee benefits and federal litigation experience. In my experience, our fees are normally substantially lower than the charges of larger firms.

(b) The attorney hourly rates in this case are well below market rates for partners in an employee benefits litigation practice and consistent with market rates in published surveys by Altman Weil, a leading law firm consultant. Specifically, Altman Weil found a median hourly rate in 2005 of \$305 for partners in an employee benefits litigation practice and that hourly rates for associates ranged up to \$273 in the Mid Atlantic region at the 90<sup>th</sup> percentile. A copy of the Altman Weil data is attached as Exhibit 7 and incorporated by reference.

9. I have executed this Declaration in support of Plaintiffs' Motion for Default Judgment against Defendant, Tri-State Technologies, Inc., and request this Court to consider the same as proof in support of the allegations contained in the Complaint of the Funds and other facts stated in this Declaration.

I declare under penalty of perjury in accordance with 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge, information and belief.

Date: May 3, 2007

/s/Sanford G. Rosenthal  
SANFORD G. ROSENTHAL, ESQUIRE

## EXHIBIT 6

# Jennings Sigmund, P.C. Time And Expense Details

Report ID: OT2025 - 11104  
Wednesday, May 02, 2007

Beginning To End

Printed By MHT  
Page 1

Client	Client Reporting Name	Matter	Matter Reporting Name	Billing Timekeeper
PFRD74	Plumbers & Pipefitters 74-Deig	28739	Tri-State Technologies, Inc.	Sigmund, Richard B.

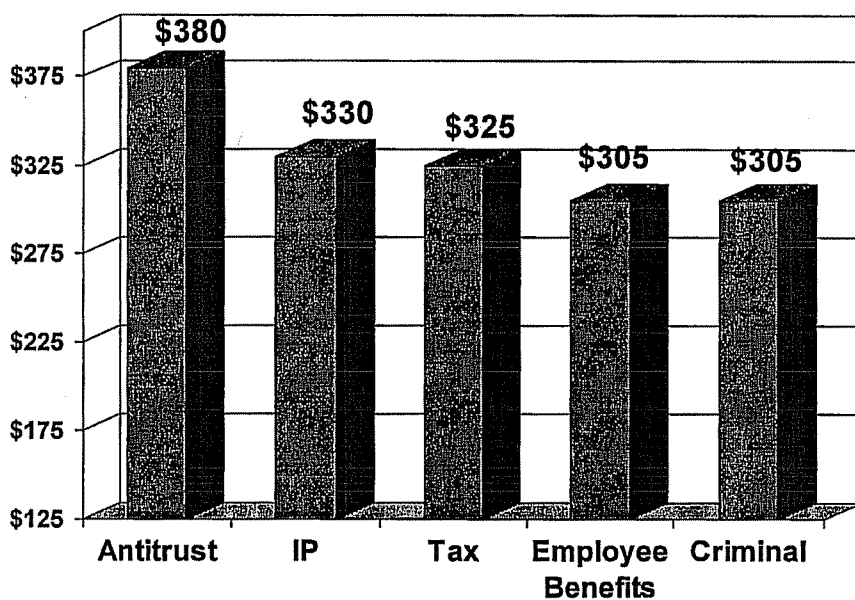
Unbilled Time		Hours	Hours To	Rate	Amount	Task	Activity	Narrative
Date	Timekeeper	Worked	Bill					
4/2/2007	SGR	0.60	0.60	240.00	\$144.00			Phone Conference with V. Ledgerwood (3x) Review of Correspondence from E. Mendez Letter to E. Mendez
4/6/2007	SGR	0.10	0.10	240.00	\$24.00			Review Local Counsel Bill Letter to S. Ernsberger regarding Same
4/10/2007	SGR	0.10	0.10	240.00	\$24.00			Review of Correspondence from E. Mendez
4/12/2007	SGR	0.10	0.10	240.00	\$24.00			Review of Documents regarding Delinquency Amounts
4/12/2007	SGR	1.00	1.00	240.00	\$240.00			Preparation of Delinquency/Settlement Analysis Letter to E. Mendez
4/16/2007	SGR	0.30	0.30	240.00	\$72.00			Phone Conference with E. Mendez
4/17/2007	SGR	0.20	0.20	240.00	\$48.00			Review of Correspondence from E. Mendez
4/20/2007	SGR	0.60	0.60	240.00	\$144.00			Review of A/R Aging Report Phone Conference with Attorney R. Miller regarding Bond and Mechanics Lien Claims
4/22/2007	SGR	0.60	0.60	240.00	\$144.00			Review of Correspondence from Attorney R. Miller regarding Same
4/23/2007	SGR	1.00	1.00	240.00	\$240.00			Review and Revision of Motion for Default Judgment Letter to V. Ledgerwood
4/25/2007	SGR	0.60	0.60	240.00	\$144.00			Phone Conference with V. Ledgerwood Review of Correspondence from V. Ledgerwood regarding Job-by-Job Breakdown and Credits
4/26/2007	SGR	0.70	0.70	240.00	\$168.00			Review of Documents regarding Same
4/26/2007	CTM	0.30	0.30	85.00	\$25.50			Review and Revision of Default Motion
4/27/2007	SGR	0.70	0.70	240.00	\$168.00			Calculate Attorneys' Fees and Costs Review of Docket regarding Bankruptcy Status
4/30/2007	SGR	0.10	0.10	240.00	\$24.00			Phone Conference with E. Mendez Phone Conference with Attorney R. Sigmund Phone Conference with R. Miller
Unbilled Time								Review of Correspondence from V. Ledgerwood
Totals		7.00	7.00		\$1,633.50			

Billed Time		Hours	Hours On	Rate	Amount	Task	Activity	Narrative
Date	Timekeeper	Worked	Bill					
2/15/2007	SGR	1.70	1.70	240.00	\$408.00			Preparation of Complaint Preparation of D & B Review regarding Corporate Status, Location for Service and General Business Information
2/19/2007	SGR	0.50	0.50	240.00	\$120.00			Phone Conference with V. Ledgerwood (2x) Letter to Attorney R. Miller



## EXHIBIT 7

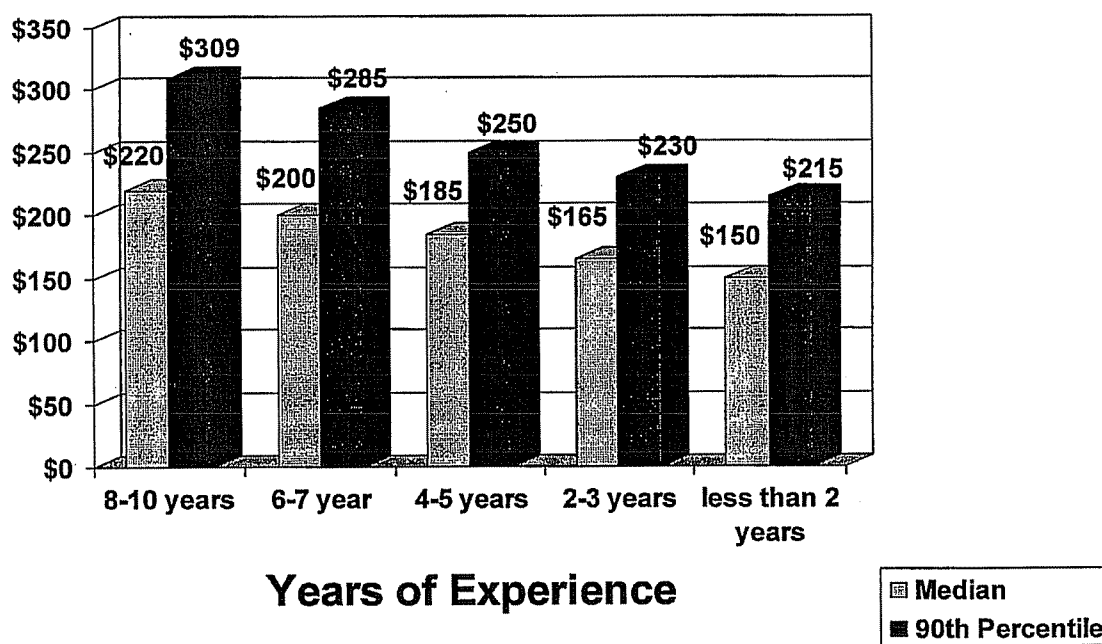
## Median Hourly Billing Rates Litigation Specialties



**Top Five  
Hourly Rates  
Equity and  
Non-Equity  
Partners**

**Source: Altman Weil Survey of Law Firm Economics  
2005 Edition**

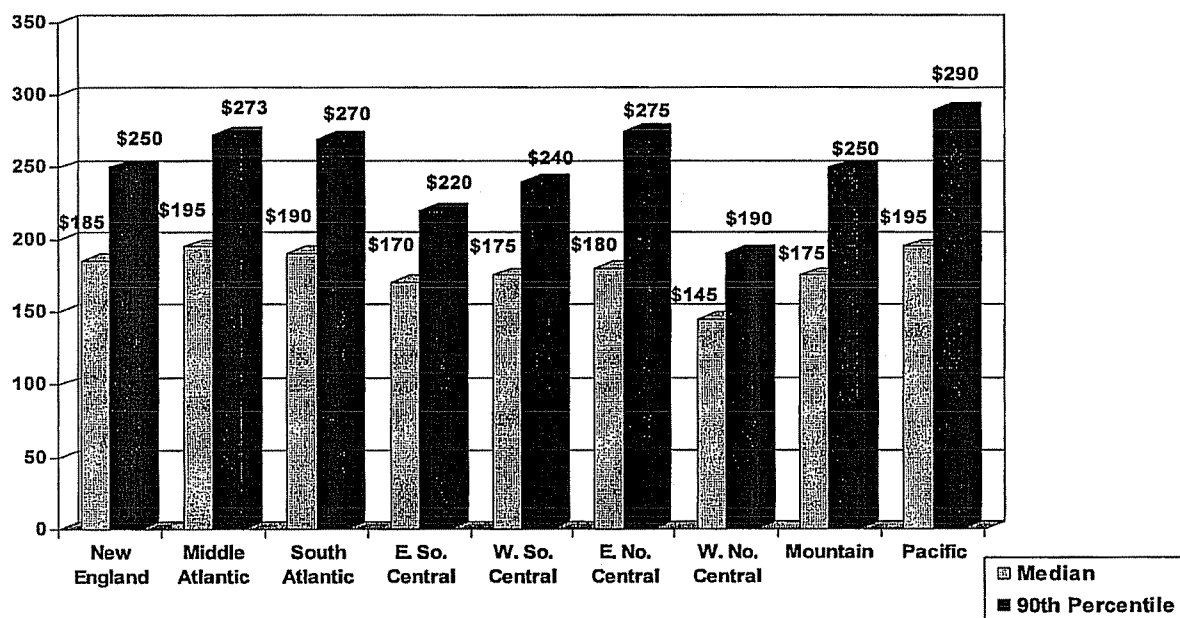
## Associate Hourly Billing Rates by Experience



Source: Altman Weil Survey of Law Firm Economics  
2005 Edition

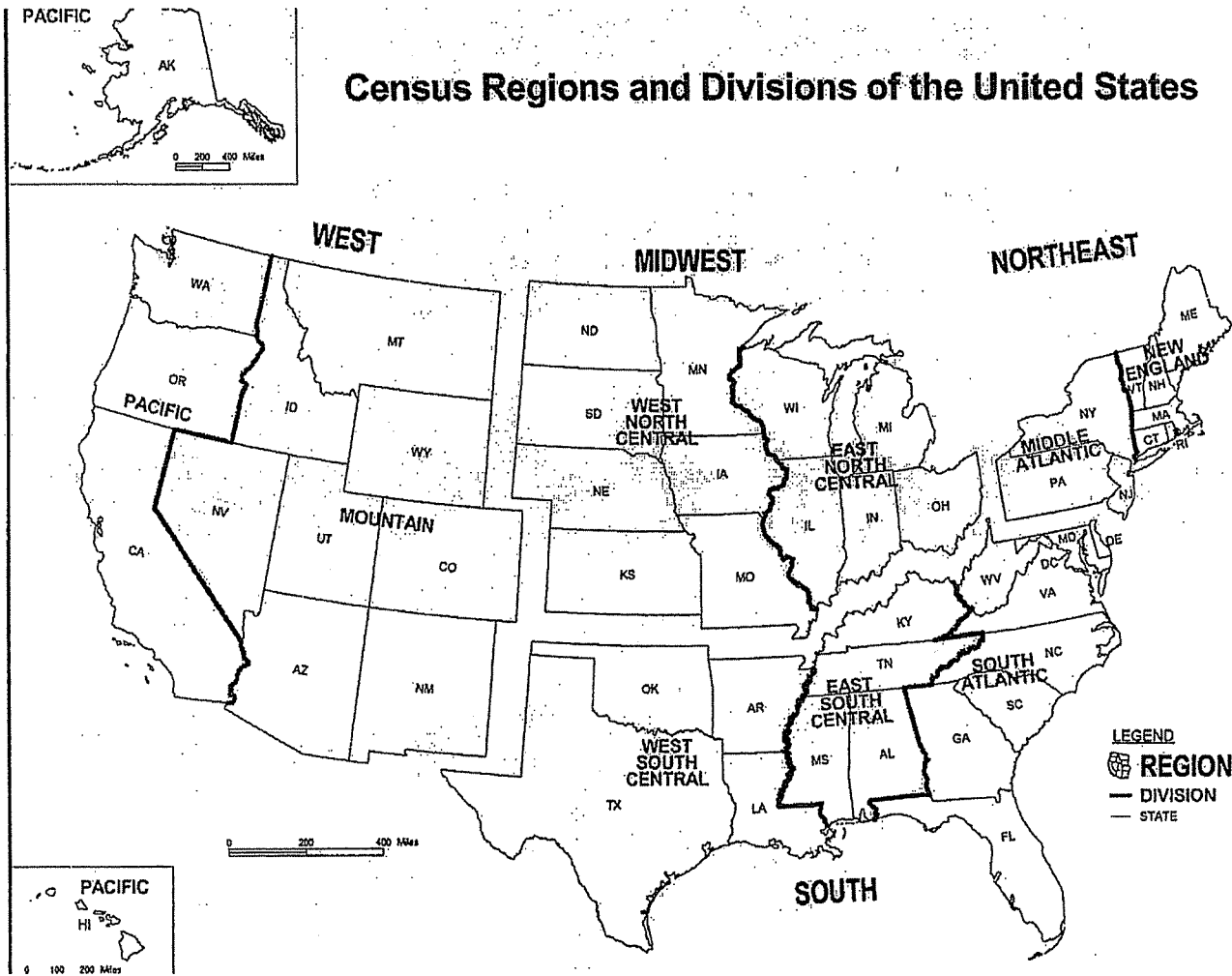


## Associate Hourly Billing Rates by Region



See following page for states included  
in each region.

Source: Altman Weil Survey of Law Firm Economics  
2005 Edition



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PLUMBERS AND PIPEFITTERS LOCAL	:	CIVIL ACTION
UNION NO. 74 ANNUITY FUND, et al.	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
TRI-STATE TECHNOLOGIES, INC.	:	
	:	
Defendant	:	NO. 07-CV-94 (JJF)

**ORDER AND JUDGMENT BY DEFAULT AGAINST  
DEFENDANT, TRI-STATE TECHNOLOGIES, INC.**

Upon consideration of the Complaint and Motion for Entry of Judgment by Default of the Plaintiffs, Plumbers and Pipefitters Local Union No. 74 Annuity Fund, Plumbers and Pipefitters Local No. 74 Health and Welfare Trust Fund, Plumbers and Pipefitters Local Union No. 74 Pension Fund (formerly the Pipefitters Local Union No. 80 Employers Joint Pension Trust Fund), Plumbers and Pipefitters Local No. 74 Apprenticeship Fund, Pipefitters Local Union No. 74 Educational/PAC Fund, (respectively, “Annuity Fund”, “Welfare Fund”, “Pension Fund”, “Apprenticeship Fund”, “Education/PAC Fund”, and, collectively, “Funds”), and Local Union No. 74 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (“Union” and together with Funds, “Plaintiffs”), Defendant, Tri-State Technologies, Inc. (“Defendant” or “Company”), was served with process on February 21, 2007, and has inexcusably, knowingly and willfully failed to appear, plead or otherwise defend, and the default against said Defendant having been entered, it is **ORDERED:**

1. Judgment is entered against Defendant and in favor of Plaintiffs in the total

amount of \$268,628.28 as itemized as follows:

- (a) Unpaid contributions in the amount of \$221,646.90 under 29 U.S.C. §1132(g)(2) and 185(a) for the period July 2006 through February 2007.
- (b) Interest on the unpaid contributions set out in ¶1(a) above through April 23, 2007 in the amount of \$5,545.93.
- (c) Liquidated damages in the amount of \$36,369.80 on the unpaid contributions as provided for in 29 U.S.C. §1132(g)(2).
- (d) Attorneys' fees and costs by Jennings Sigmond, P.C. in the amount of \$3,615.65 incurred through April 30, 2007 pursuant to 29 U.S.C. §1132(g)(2)(D).
- (e) Attorneys' fees and costs by Ferry, Joseph & Pearce, P.A. in the amount of \$1,450.00 incurred through April 30, 2007 pursuant to 29 U.S.C. §1132(g)(2)(D).

2. ORDERED that Defendant, its owners, officers, agents, servant, attorneys, and all persons acting on their behalf or in conjunction with them shall be and hereby are restrained and enjoined from refusing to file complete, proper and timely remittance reports with accompanying contributions for all periods for which Defendant is obligated to do so under the collective bargaining agreement(s).

3. ORDERED that the Funds shall have the right to conduct an audit of Company's books and records for all relevant periods, including the time period from July 2006 through the date of the audit. Company, its owners, officers, agents, servants, employees and all persons acting on Company's behalf or in conjunction with Company, shall be and are hereby restrained and enjoined from failing and refusing to submit to such audits by certified public accountants selected by the Funds and shall produce all books and records requested by the auditor and/or the Trustees of the

Funds, including, but not limited to, payroll, wage, general ledger and cash disbursement records, compensation insurance audits, and any other pertinent records deemed necessary for the purpose of ascertaining and/or verifying payments and/or liabilities to the Funds. Company shall pay to the Funds the cost of the audit together with any additional amounts found owing, plus such other amounts as set forth in the collective bargaining agreement, the trust agreements and rules and regulations of the Funds, ERISA and applicable law.

4. If further action by Plaintiffs to enforce this judgment is required, Plaintiffs may apply to this Court or to the Court in which enforcement is sought for further reasonable attorneys' fees and costs in addition to those set out in ¶1(d) and (e) above.

5. Plaintiffs may apply to this Court or to the Court in which enforcement is sought for additional interest on the unpaid contributions set out in ¶1(a) from April 23, 2007 until the date they are paid which interest shall be calculated at the applicable rates under 29 U.S.C. §1132(g)(2)(C)(i) and 26 U.S.C. §6621.

BY THE COURT

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
JOSEPH J. FARNAN JR., J.  
United States District Court